

The Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON; et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
STATE; et al.,

Defendants.

NO. 2:20-cv-00111-RAJ

DECLARATION OF
KRISTIN BENESKI IN SUPPORT
OF PLAINTIFF STATES'
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT AND CROSS-
MOTION FOR SUMMARY
JUDGMENT

I, Kristin Beneski, declare as follows:

1. I am over the age of 18 and have personal knowledge of all the facts stated herein.

2. I am a Section Chief in the Complex Litigation Division of the Washington State Attorney General's Office, which represents the State of Washington in this matter.

3. I conducted a targeted review of the Administrative Record filed by the Federal Defendants in this matter (Dkt. ## 106, 107, 109). The Administrative Record was loaded into a document review software program, and we applied keyword searching and a tagging system to review the record.

4. I reviewed all documents in the Administrative Record containing any of the following search terms: "AMF"; "G-code"; "G code"; "734.7"; "3D"; "3-D"; "print*"; and "internet". None of the documents I reviewed contained any analysis or information related to

1 the scope or meaning of the terms AMF or G-code; the scope or meaning of the phrase “ready
 2 for insertion”; the scope of Subsection (c) of 15 C.F.R. 734.7 or its applicability to certain 3-D
 3 firearms files or file types; or any substantive comparison of the regulation of 3-D firearms files
 4 under ITAR versus their intended regulation under Subsection (c) of 15 C.F.R. 734.7.

5 5. By way of illustration, the keyword hits for the narrowest search terms, “AMF”
 6 and “G-code,” comprised the following:

7 a. **AMF** (five hits total):

- 8 i. Two hits within copies of Subsection (c) of 15 C.F.R. 734.7. Dkt. # 106-
 9 1, page 248 of 2650 (WASHSTATEB000248); Dkt. # 106-3, page 581
 10 of 992 (WASHSTATEB007151).
- 11 ii. Two hits within copies of the Commerce Rule’s preamble. Dkt. # 106-
 12 1, pages 118 and 125 of 2650 (WASHSTATEB000118, 125).
- 13 iii. One hit within a copy of a Congressional Committee Report on a bill,
 14 as part of the phrase “AMF Joint Tactical Radio System,” in which
 15 “AMF” does not appear to refer to 3-D firearm files. Dkt. # 106-6, page
 16 458 of 1241 (WASHSTATEA458).

17 b. **G-code** (five hits total):

- 18 i. Two hits within copies of Subsection (c) of 15 C.F.R. 734.7. Dkt. # 106-
 19 1, page 248 of 2650 (WASHSTATEB000248); Dkt. # 106-3, page 581
 20 of 992 (WASHSTATEB007151).
- 21 ii. Two hits within copies of the Commerce Rule’s preamble. Dkt. # 106-
 22 1, pages 118 and 125 of 2650 (WASHSTATEB000118, 125).
- 23 iii. One hit within a 2015 letter from Defense Distributed’s counsel to the
 24 Department of Defense Trade Controls, as part of Defense Distributed’s
 25 commodity jurisdiction request. Dkt. # 107-21, page 148 of 546
 26 (DOSWASHINGTONSUP00171).

6. A compilation of the excerpts of the Administrative Record referenced in Paragraph 5 above, which are true and correct copies thereof, are attached as **Exhibit A**.

7. Attached hereto as **Exhibit B** is a true and correct copy of a March 1, 2013 Ars Technica article, “*Download this gun*”: 3D printed semi-automatic fires over 600 rounds, authored by Cyrus Farviar, available at <https://arstechnica.com/tech-policy/2013/03/download-this-gun-3d-printed-semi-automatic-fires-over-600-rounds/> (last visited Feb. 14, 2021).

8. Attached hereto as **Exhibit C** is a true and correct copy of Defendants’ Motion to Dismiss Second Amended Complaint filed in the matter of *Defense Distributed, et al. v. U.S. Department of State, et al.*, W.D. Tex. No. 1:15-cv-372-RP, produced as part of the administrative record in this case bearing Bates numbers DOSWASHINGTONSUP01533–1562, filed at Dkt. # 107-22 at pp. 964–993 of 996.

9. Attached hereto as **Exhibit D** is a true and correct copy of the Declaration of Lisa V. Aguirre with its seven exhibits filed in the matter of *Defense Distributed, et al. v. U.S. Department of State, et al.*, W.D. Tex. No. 1:15-cv-372-RP, produced as part of the administrative record in this case bearing Bates numbers DOSWASHINTGONSUP00438–507, filed at Dkt. # 107-21 at pp. 415–484 of 546.

10. Attached hereto as **Exhibit E** is a true and correct copy of Defendants’ Opposition to Plaintiffs’ Motion for a Preliminary Injunction in the matter of *Defense Distributed, et al. v. U.S. Department of State, et al.*, W.D. Tex. No. 1:15-cv-372-RP, produced as part of the administrative record in this case bearing Bates numbers DOSWASHINGTONSUP00397–437, filed at Dkt. # 107-21 at pp. 374–414 of 546.

11. Attached hereto as **Exhibit F** is a true and correct copy of a Settlement Agreement produced as part of the administrative record in this case bearing Bates numbers DOSWASHINGTONSUP00001–8, filed at Dkt. # 107-20, pp. 1–8 of 23.

12. Attached hereto as **Exhibit G** is a true and correct copy of the Second Amended Complaint in the matter of *Defense Distributed, et al. v. U.S. Department of State, et al.*, W.D.

1 Tex. No. 1:15-cv-372-RP, produced as part of the administrative record in this case bearing Bates
2 numbers WASHSTATEB007308–7322, filed at Dkt. # 106-3 at pp. 738–752 of 992.

3 13. Attached hereto as **Exhibit H** is a true and correct copy of excerpts of the
4 transcript of proceedings held on August 21, 2018, in the matter of *Washington, et al. v. U.S.*
5 *Department of State, et al.*, W.D. Wash. No. 1:18-cv-1115-RSL.

6 14. Attached hereto as **Exhibit I** is a true and correct copy of the Plaintiff States’
7 Motion for Summary Judgment in the matter of *Washington, et al. v. U.S. Department of State,*
8 *et al.*, W.D. Wash. No. 1:18-cv-1115-RSL, produced as part of the administrative record in this
9 case bearing Bates numbers WASHSTATEB007403–7433, filed at Dkt. # 106-3 at pp. 833–863
10 of 992.

11 15. Attached hereto as **Exhibit J** is a true and correct copy of the Plaintiff States’
12 Combined Reply in Support of Motion for Summary Judgment and Opposition to Defendants’
13 Cross-Motions for Summary Judgment in the matter of *Washington, et al. v. U.S. Department of*
14 *State, et al.*, W.D. Wash. No. 1:18-cv-1115-RSL, produced as part of the administrative record
15 in this case bearing Bates numbers WASHSTATEB007452–7483, filed at Dkt. # 106-3 at pp.
16 882–913 of 992.

17 16. Attached hereto as **Exhibit K** is a true and correct copy of a comment letter from
18 Professor Susan Waltz to the Office of Defense Trade Controls Policy, Department of State and
19 the Regulatory Policy Division, Bureau of Industry and Security, produced as part of the
20 administrative record in this case bearing Bates numbers WASHSTATEA10475–81, filed at
21 Dkt. # 106-6 at pp. 906–912 of 1241.

22 17. Attached hereto as **Exhibit L** is a true and correct copy of a comment letter from
23 the Brady Campaign to Prevent Gun Violence On the Department of State Proposed Rule to
24 Amend the International Traffic in Arms Regulations: U.S. Munitions List Categories I, II, and
25 III And the Department of Commerce Proposed Rule Regarding Control of Firearms, Guns,
26 Ammunition and Related Articles the President Determines No Longer Warrant Control Under

1 the United States Munitions List, produced as part of the administrative record in this case
 2 bearing Bates numbers WASHSTATEA10398–407, filed at Dkt. # 106-6 at pp. 829–838 of
 3 1241.

4 18. Attached hereto as **Exhibit M** is a true and correct copy of an Information Memo
 5 for the Secretary dated October 18, 2019, produced as part of the administrative record in this
 6 case bearing Bates numbers WASHSTATEB006956–59, filed at Dkt. # 106-3 at pp. 524–527 of
 7 992.

8 19. Attached hereto as **Exhibit N** is a true and correct copy of an Action Memo for
 9 the Secretary dated January 6, 2020, produced as part of the administrative record in this case
 10 bearing Bates numbers WASHSTATEB00001–17, filed at Dkt. # 106-1 at pp. 1–17 of 2650.

11 20. Attached hereto as **Exhibit O** is a true and correct copy of a screen shot of a
 12 posting dated March 7, 2020 on the U.S. Department of State Directorate of Defense Trade
 13 Controls’ webpage titled *Court Ordered Injunction Pertaining to Revisions to the U.S. Munitions*
 14 *List Categories I, II, and III*, obtained from the DDTC’s webpage on March 9, 2020.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 DATED this 19th day of February, 2021.

17 s/ Kristin Beneski
 18 KRISTIN BENESKI

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification of such filing to all counsel of record.

DATED this 19th day of February 2021, at Seattle, Washington.

s/ Kristin Beneski

KRISTIN BENESKI, WSBA #45478

Assistant Attorney General